United States Court of Appeals

for the Second Circuit

APPENDIX

75-1216

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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P/S

- -X

UNITED STATES OF AMERICA :

-v- :

BRUNILDA RODRIGUEZ :

Appellant :

- -X

APPENDIX

ABRAHAM SOLOMON, ESQ.
Attorney for Appellant
Brunilda Rodriguez
85 Baxter Street
New York, New York 10013

PAGINATION AS IN ORIGINAL COPY

D. C. Form No. 100
CRIMINAL DOCKET

JUDGE BRIEANT

74 CRIM. 382

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	James P. Lavin, AUSA
~ RICARDO QUILES-1,3,5,6,	264-6347
VICTOR SOTO-1,4,5,8	
HECTOR SOTO-1,3,4,5,9	
~ SANTIAGO MEDINA-1,2	
ANTONIO REYES-1,2,3	For Defendant:
BRUNILDA RODRIGUEZ-1,3	
JOSEPH CACCIOLA-1,7	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(07)					
Fine,					
Clerk,					
Marshal,					
Attorney,					
~~Commissioner's Court~~ 21					
~~Witnesses~~ 846,812,841(a)(1),(b),924(c)(2).					
Consp. to viol. Fed. Narcotic Laws.(Ct.1)					
Distr. & possess. w/intent to distr.Heroin,I.(Cts.2-7)					
Possess. of firearm dur. commission of felony.(Cts.8&9)					
(Nine Counts)					

DATE	PROCEEDINGS
4-11-74	Filed indictment.
4-22-74	Deft Soto appears(atty present)Deft pleads not guilty, 10 days for motions Case assigned to Judge Brieant, bail fixed at $10,000 PRB secure by $250.00 cash, bond co-signed by wife & mother. Pierce,J.
	Deft Quiles-present, adj. to 4-29-74, no atty present- Court directs a not guilty plea, bail cont'd at $10,000 PRB secured by $250.00 cash.
4-22-74	Deft Cacciol present(atty present)deft pleads not guilty, 10 days for mo case assigned to Brieant,J. bail fixed at $10,000 PRB secured by

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
	$1,000 Cash co-signed by wife.		
	Deft Medina not present (no atty) Court directs a not guilty plea. Adj/ to 4-29-74 Pierce,J.		
4-22-74	Deft Victor Soto present with atty R. Mitchell-Deft pleads not guilty 10 days for motions, bail fixed at $10,000 PRB secured by $250.00 cash.		
	Deft Rdoriguez appears(atty Ed Panzer)deft pleads not guilty, 10 days for Motions, bail fixed at $1,000 PRB secured by $100 cash.		
	Deft Reyes appears(no atty)Court directs a not guilty plea, bail fixed at $10,000 PRB secured by $500.00 cash. adj. to 4-29-74. Pierce,J.		
4-26-74	Filed affdvt. for W/H/C Ad Pros. for SANTIAGO MEDINA.		
4-29-74	DEFTS: RICARDO QUILES, VICTOR SOTO, HECTOR SOTO, ANTONIO RYES, PLEADS NOT GUILTY; 10 days for motion, case referred to BRIEANT,J. Bails fixed by mag. cont'd. BAUMAN,J.		
5-2-74	CACCIOLA - Filed notice of appearance by David Greenfield,115 B'Way NYC 349-7980.		
5-2-74	QUILES - Filed notice of appearance by Jerold Weissfeld,160 B'Way BA -7-9826.		
5-2-74	REYES - Filed notice of appearance by L.H. Levner 521 5th Ave. MU-7-4640.		
5-2-74	COHEN - Filed notice of appearance by Kalman V.Gallop 1345 Ave. of Americas, 246-2880.		
5-3-74	Deft. Santiago Medina Produced on writ. (No Atty Present) Adjd. until 5-10-74. Deft. remanded. BAUMAN,J.		

Cont'd on page 3

DATE	PROCEEDINGS
5-3-74	Filed Govt.'notice of readiness for trial.
5-10-74	RICARDO QUILES - Filed affdvt. and notice of motion for B/P.
5-13-74	SANTIAGO MEDINA= Writ adjourned to 5-10-74 - Deft. REMANDED.
5-28-74	RICARDO QUILES= Filed MEMO ENDORSEMENT on Deft's motion for B/P. Motion withdrawn. See transcript this date - SO ORDERED--BRIEANT,J. (mailed notice)
5-28-74	RICARDO QUILES= Filed Deft's motion for Discovery & Inspection.
5-28-74	RICARDO QUILES= Filed MEMO ENDORSEMENT on Deft's motion for Discovery & Inspection. The within motion has been disposed of in accordance with directions made at a hearing this date. See transcript -SO ORDERED--BRIEANT,J. (Mailed notice)
7-18-74	ANTONIO REYES= ~~Filed~~ Mailed original CJA copy 1 to the A.O., WASH D.C. for payment --- BRIEANT,J. Filed CJA, copy 5, appointment of Interpreter, Richard Schoen, Box 427, Madison Ave Station, NYC 10010.
7-18-74	RICARDO QUILES & ANTONIO RYES= Mailed Original CJA copy 1 to the A.O. WASH,D.C. for payment --BRIEANT,J. Filed CJA copy #5, appointment of interpreter, Jose Melendez, 536 W. 173 St, NYC 10032.
6-26-74	SANTIAGO MEDINA= Mailed original CJA copy 1 to the A.O. WASH D.C. for payment --BRIEANT. Filed CJA appointment of Interpreter, Ms. Maria Elena Cardenas, 319 E. 93rd St, NYC 10028.
7-18-74	RICARDO QUILES+ Mailed Original CJA copy 1 to the A.O. WASH D.C. for payment- BRIEANT, J. Filed C.J.A. Copy #5, appointment of Interpreter, Richard Schoen, Box 427, Madison Ave Station, NYC 10010.
8-6-74	Filed transcript of record of proceedings, dated JUN 28 1974
8-30-74	Filed transcript of record of proceedings, dated 7-11-74
6-28-74	QUILES (Jerold Weissfeld), RODRIGUEZ (Edward Panzer), CACCIOLA (D. Greenfield), REYES (L. Levner), present. Suppression hearing began and adj'd to 7-9-74.
7-9-74	Suppression hearing cont'd.
7-11-74	Hearing cont'd.
7-26-74	Hearing cont'd and concluded. Decision RESERVED- BRIEANT, J.
9-5-74	RICARDO QUILES= Filed CJA Appointment of Jerold C. Weis. feld, Court Reporter.
9-5-74	ANTONIO REYES = Filed CJA Appointment of Lawrence Levner, Court Reporter.
9-10-74	Filed transcript of record of proceedings, dated JULY 11, 1974.
9-10-74	Filed transcript of record of proceedings, dated JULY 9, 1974.

Cont'd on Page #4

DATE	PROCEEDINGS
9-25-74.	Filed the following papers rec'd from Magistrate Raby (Mag# 73-1576): 6 Docket Entry Sheets - Criminal Complaint - Disposition Sheet - 6 Appointments of Counsel - Financial Affdvts - 6 Appearance Bonds - 2 Mag. Temporary Commitments.
11-26-74	Filed transcript of record of proceedings, dated 9-26-74
1-21-75	SANTIAGO MEDINA= Filed Deft's Notice of Motion to Quash and/or Dismiss Indictment.
1-31-75	SANTIAGO MEDINA= Filed Deft's Memorandum in support of Motion to Dismiss for Lack of fast and speedy trial with MEMO ENDORSEMENT. Motion withdrawn. See transcrip of hearing this date. ---BRIEANT,J. (Pro-Se to m/p)
2-4-75	ANTONIO REYES= Filed Deft's Motion for Pre-Trial relief and Affirmation.
1-28-75	SANTIAGO MEDINA= (Atty Robert Leighton present) pleads GUILTY to COUNT 1 only. P.S.I. ordered. Sent. adj'd 2-25-75. Remanded. Interpreter J. Cuma present--BRIEANT,J.
2-18-75	RICARDO QUILES, ANTONIO REYES, ERUNILDA RODRIGUES = Filed Pltff's MEMORANDUM & ORDER in reference to Deft's motion to Suppress. - Deft's motions to suppress are in all respects DENIED--BRIEANT,J. (Mailed notices).
2-11-75	SANTIAGO MEDINA= Mailed original CJA copy 1 to the A.O.,Wash, D.C. for payment-BRIEANT,
2-14-75	SANTIAGO MEDINA= Filed CJA appointment of Interpreter, Joaquin R. Cuma, 319 E. 93 St, N.Y.C. 10028 --BRIEANT,J.
2-25-75	SANTIAGO MEDINA= Filed Judgment and Commitment Order - The Deft is hereby committed to the custody of the Atty General for a period of THREE and ONE-HALF (3½) YEARS on COUNT 1. Pursuant to Section 841 of Title 21, U.S. Code, Deft is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. The Court pursuant to Section 4082 of Title 18, U.S. Code, recommends that the Atty General arrange to have this sentence served concurrently with the State sentence Deft is currently serving in so far as the sentence can be served concurrently. The balance of this sentence, if any, may be served in an institution to be designated by the Attorney General. COUNT 2 is DISMISSED on motion of Deft's counsel with consent of the government. Deft produced in Court on a Writ of Habeas Corpus Ad Prosequendum. Writ satsified. ----BRIEANT, J.
3-13-75	ANTONIO REYES= Filed MEMO ENDORSEMENT on Deft's motion for Pre-Trial relief filed 2-4-75. Motion DENIED, see transcrip of hearing this date, SO ORDERED--BRIEANT,J (m/
3-14-75	ANTONIO REYES= Filed Pltff's Memorandum of Law.
3-14-75	ANTONIO REYES= Filed affdvt of Jeffrey I. Glekel, AUSA, in opposition to Deft's motion to dismiss indictment.
3-13-75	SOTO, VICTOR= Bench Warrant Issued.
3-24-75	SANTIAGO MEDINA= Filed commitment & entered return - Executed this judgement and commitment in part by mailing a copy to the Warden of Clinton Correctional Facility, the designated institution for concurrent service of this sentence - U.S. MARSHAL.
4-23-75	RICARDO QUILES= Filed Deft's acknowledgement of his constitutional rights.

Cont'd on Page #5

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Ord Judgment
4-23-75	RICARDO QUILES= Deft (Atty Jerold Weissfeld) present, withdraws previous plea of NOT GUILTY and pleads GUILTY to COUNTS 1 & 3. P.S.I. ordered. Sentence adj'd to June 5, 1975. Bail cont'd.----BRIEANT,J.	
5-9-75	Filed Pltff's Requests to Charge.	
5-6-75	JOSEPH CACCIOLA= Deft (David Greenfield) present. Withdraws previous plea of NOT GUILTY and pleads GUILTY to count #1 only. P.S.I. ordered. Sentence adj'd to June 17, 1975. Bail cont'd. Abraham Solomon appointed counsel for B. RODRIGUEZ. Edward Panzer relieved as counsel.---BRIEANT,J.	
5-6-75	Jury Trial began as to Deft's. H. SOTO, B. RODRIGUEZ, and ANTONIO REYES. Deft. VICTOR SOTO - severed from Trial. Bail forfeited. ---BRIEANT, J.	
5-7-75	HECTOR SOTO= Deft, (Atty J. Lipson) present. Withdraws previous plea of NOT GUILTY and pleads GUILTY to COUNTS 1 & 3. P.S.I. ordered. Sentence adj'd to 6-18-75. Bail cont'd and enlarged to include Eastern Dist. of N.Y. TRIAL CONTINUED--BRIEANT,J.	
5-8-75	Trial continued.	
5-9-75	Trial continued and concluded. Jury verdict: Deft. A. REYES GUILTY ON COUNTS 1,2, & 3. P.S.I. ordered. Sentence adj'd to 6-6-75. DEFT REMANDED in lieu of bail increased to $5,000. Cash or surety. Deft. B. RODRIGUEZ GUILTY ON COUNTS 1 & 3. P.S.I. ordered. Sent. adj'd to 6-20-75. Bail cont'd. ---BRIEANT,J.	
5-13-75	ANTONIO REYES= Remand inssued, dated 5-9-75.	
6-6-75	ANTONIO REYES= Filed Judgment And Commitment Order= The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TWELVE (12) YEARS on each of COUNTS 1, 2, and 3, to run concurrently with each other. Pursuant to Section 841 of Title 21, U.S. Code, Deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. Deft. remanded.-----BRIEANT,J.	
6-5-75	RICARDO QUILES= Filed Judgment And Probation/Commitment Order= The Deft. is hereby committed to the custody of the Atty General on COUNTS 1 and 3 for treatment and supervision as a YOUNG ADULT OFFENDER pursuant to Section 5010(b) of Title 18, U.S.Code, as extended by Section 4209 of Title 18, U.S. Code, until discharged by the Federal Youth Correction Division of the Board of Parole as provided in Section 5017(c) of Title 18, U.S. Code. COUNTS 5 and 6 are DISMISSED on the motion of Deft's counsel with the consent of the Governemnt. Deft cont'd on present Bail until June 9, 1975 at which time he is to surrended in Room 506 for services of sentence.----BRIEANT,J.	
6-9-75	VICTOR SOTO= Mailed original CJA Copy #1 to the A.O., Wasd. DC for payment--BRIEANT,J.	
6-9-75	ANTONIO REYES= Mailed original CJA Copy #1 to the A.O., Wash. DC for payment-BRIEANT,J. Filed CJA appointment of counsel, Samuel Alfonso, 471 39th St, Brooklyn, NY Tel #UL-4-7849.	
6-6-75	ANTONIO REYES= Filed Deft's Notice of Appeal to U.S.C.A. for the 2nd Circuit. Leave to proceed on Appeal in forma pauperis is granted---BRIEANT,J. (n/m to USA and Deft.)	

DATE	PROCEEDINGS	Date Order Judgment N
20-75	A. Reyes-Filed Remand dated 5-9-75.	
23-75	[redacted] MAY 6, 7, 8, 9 - 1975	
6-19-75	HECTOR SOTO-Filed JUDGMENT & COMMITMENT ORDER-The deft. is hereby committed to the custody of the Atty Gen. for imprisonment on counts 1&3 pur. to Sec. 4208(b) of Title 18,U.S. Code, for study, report and recommendations, as described in Sec. 4208(c). This Commitment is deemed to be for the maximum sentence prescribed by law, to wit: FIFTEEN (15) YEARS, unless altered pur. to said sec. upon the receipt of the report and recommendations. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining disposition of the case shall be furnished to the Court within a period of THREE(3) MONTH.....COUNTS 4,5, and 9 are dismissed on deft's counsel with consent of the Govt.----Brieant,J.	
6-20-75	BRUNILDA RODRIGUEZ-Filed JUDGMENT & COMMITMNET-The deft is hereby committed to the custody of the Atty Gen. for a period of EIGHTEEN (18) MONTHS on each of Counts 1 and 3 to run concurrently with each other. Pur. to Sec. 841 of Title 21, U.S Code, deft is place on Special Parole for a period of THREE 93) YEARS, to commence upon expiration of confinement.....Deft. is continued on present bail until she posts bail pending appeal fixed at $1,000.00. Personal Recognizance Bond secured by $100.00 cash..... .....Brieant,J.	
6-25-75	BRUNILDA RODRIGUEZ-Filed Deft's Notice of Appeal from Final Judgment ent 6-20-75.. ....to the USCA ....Leave to appeal in forma pauperis is granted. .....Brieant,J.....Copies of Appeal mailed to Deft-Deft's atty., U.S. Atty's office-Reilley, Asst US Atty. on 6-26-75.	

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

X

USA

VS

QUILES

X

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK.

CASE NO. 74 Cr 382

JUDGE CLB

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK.

U.S.A

vs
RICARDO QUILES

CASE NO. 74 cir 382

JUDGE CLB

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

USCA
7/2/75

U.S.C.A. NO. 75-1216

UNITED STATES OF AMERICA vs RODRIGUEZ, et al	U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK CASE NO. 74 Cr 382 JUDGE Frieant

1st Supplemental Record.

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SENT TO USCA - ON JULY-7-1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

U.S.C.A. NO. 75-1216

UNITED STATES OF AMERICA vs BRUNILDA RODRIGUEZ, et al	U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK CASE NO. 74 Cr 382 JUDGE [illegible]

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, :

- v - : INDICTMENT

RICARDO QUILES, VICTOR SOTO, HECTOR SOTO, SANTIAGO MEDINA, ANTONIO REYES, BRUNILDA RODRIGUEZ, JOSEPH CACCIOLA, : 74 Cr. 382

Defendants. :

- -x

The Grand Jury charges:

1. From on or about the 1st day of June, 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, RICARDO QUILES, VICTOR SOTO, HECTOR SOTO, SANTIAGO MEDINA, ANTONIO REYES, BRUNILDA RODRIGUEZ and JOSEPH CACCIOLA, the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendant unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about September 17, 1973, the defendants SANTIAGO MEDINA and ANTONIO REYES were in Apartment No. 6 at 1800 Monroe Avenue, Bronx, New York.

2. On or about October 15, 1973, the defendant BRUNILDA RODRIGUEZ introduced the defendant HECTOR SOTO to an undercover officer of the Drug Enforcement Administration Task Force.

3. On or about October 15, 1973, the defendants HECTOR SOTO, BRUNILDA RODRIGUEZ and RICARDO QUILES were in Apartment 409 at 240 East 175th Street, Bronx, New York.

4. On or about October 16, 1973, the defendants HECTOR SOTO and VICTOR SOTO had in their possession approximately one-half ounce of heroin.

5. On or about October 26, 1973, the defendant RICARDO QUILES had in his possession approximately 53 grams of heroin.

6. On or about November 6, 1973, the defendant RICHARDO QUILES met with the defendant JOSEPH CACCIOLA.

(Title 21, United States Code, Section 846)

Rev. 5-27-72

(Succeeding Count)

SECOND COUNT

THE GRAND JURY FURTHER CHARGES:

On or about the 17th day of September, 1973, in the Southern District of New York,

SANTIAGO MEDINA and ANTONIO REYES,

the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute and distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 24.14 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).) and Title 18, United States Code, Section 2.)

THIRD COUNT

The Grand Jury further chargesm

On or about the 15th day of October, 1973,

in the Southern District of New York,

ANTONIO REYES, BRUNILDA RODRIGUEZ, HECTOR SOTO,

and RICARDO QUILES,

the defendant s, unlawfully, intentionally and knowingly

did distribute and possess with intent to distribute, a Schedule I

narcotic drug controlled substance, to wit, approximately

14.66 grams of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

and Title 18, United States Code, Section 846.)

USA-338-320A - IND/INF - Possession With Intent to Dist. Narc. Drug
Rev. 5-27-72 (Succeeding Count)

COUNT

FOURTH

The Grand Jury further charges:

On or about the 10th day of October, 1973,

in the Southern District of New York,

HECTOR SOTO and VICTOR SOTO,

the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 10.89 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).), and Title 18, United States Code, Section 2.

USA-33s-528A - IND/INF - Possession With Intent to Dist. Narc. Drug
Rev. 5-27-72 (Succeeding Count)

FIFTH COUNT

The Grand Jury further charges:

On or about the 28th day of October, 1973, in the Southern District of New York, RICARDO QUILES, HECTOR SOTO and VICTOR SOTO, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 93.46 of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).) and Title 18, United States Code, Section 2.)

USA-33s-520A - IND/INF - Possession With Intent to Dist. Narc. Drug
Rev. 5-27-72 (Succeeding Count)

SIXTH COUNT

The Grand Jury further charges:

On or about the 6th day of November, 1973,

in the Southern District of New York, RICARDO QUILES,

the defendant , unlawfully, intentionally and knowingly

did distribute possess with intent to distribute, a Schedule I

narcotic drug controlled substance, to wit, approximately

48.29 grams of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).), and Title 18,
United States Code, Section 2.)

USA-338-5288 - IND/INF - Possession With Intent to Dist. Narc. Drug
Rev. 5-27-72 (Succeeding Count)

[redacted] COUNT

The Grand Jury further charges:

On or about the 6th day of November, 1973,

in the Southern District of New York,

JOSEPH CACCIOLA,

the defendant , unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 260.90 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

EIGHTH COUNT

The Grand Jury Further Charges:

On or about the 16th day of October, 1973, in the Southern District of New York, VICTOR SOTO, the defendant, did unlawfully, wilfully and knowingly carry a firearm during the commission of a felony, for which he could be prosecuted in a court of the United States; to wit, Title 21, United States Code, Sections 812, 841(a)(1), 841(b)(1)(A) and 846.

(Title 18, United States Code, Section 924(c)(12).)

The Grand Jury Further Charges:

On or about the 26th day of October, 1973, in the Southern District of New York, HECTOR SOTO, the defendant, did unlawfully, wilfully and knowingly carry a firearm during the commission of a felony, for which he could be prosecuted in a court of the United States, to wit, Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A) and 846.

(Title 18, United States Code, Section 924(c)(2).)

Foreman

PAUL J. CURRAN
United States Attorney

UNITED STATES OF AMERICA

vs. 74 Cr. 382

VICTOR SOTO, et al.

May 9, 1975
10:15 a.m.

(Trial resumed, jury present.)

THE CLERK: The Court is about to charge the jury. Any spectator wishing to leave will do so now.

CHARGE OF THE COURT

THE COURT: Good morning, members of the jury.

Mrs. Miller and members of the jury, we are now at that stage in the trial where you will soon undertake your final function as jurors.

Here you perform one of the most sacred obligations of citizenship, which is acting as ministers of justice and you are to discharge this final duty in an attitude of complete fairness and impartiality and, as I emphasized when you were selected, without bias or prejudice for or against the Government or for or against any defendant as parties to this controversy.

Let me state the fact that the Government is a party entitles it to no greater consideration from you than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration because

all parties, individuals and Government alike stand as equals before the bar of justice.

Your final role here is to decide and pass upon the fact issues in the case. You are the sole and exclusive judges of the facts. You determine the weight of the evidence. You appraise the credibility or truthfulness of the witnesses and you draw the reasonable inferences from the evidence and you resolve such conflicts as there may be in the evidence.

I shall later discuss with you in greater detail how you determine the credibility or truthfulness of witnesses.

My final function here is to instruct you as to the law and it is your duty to accept these instructions as to the law and then apply them to the facts of the case as you may find them to be. You are not to consider any one single instruction I may give you alone as stating the law but you must consider all my instructions, taken together as a whole. With respect to any fact matter, it is your recollection and yours alone that governs.

Anything that the lawyers either for the Government or any defendant may have said with respect to matters in evidence during the trial, whether in a question, in argument or in summations, is not to be

substituted for your own recollection of what the evidence is. Accordingly, anything that I might say during the trial or anything I might refer to during the course of giving these instructions as to any matter in evidence is not to be taken in lieu of your own recollection.

Now, the attorneys not only have their right but it is their duty to make objections and to press vigorously whatever legal theories they may have in the case. They are simply performing their duty. Any evidence as to which an objection was sustained by the Court and any answer ordered stricken out by the Court must be disregarded in its entirety and you must put it out of your mind.

Also put out of your mind any exchanges which may have occurred during the trial between the lawyers or between any attorney and the Court. It is not my function to favor one side or the other or to criticize anybody in any way whatsoever or to indicate to you, the jury, in any way that I have any opinion as to the truthfulness or credibility of any witness or as to the guilt or innocence of the defendant. That is your function, yours alone and I leave it entirely with you.

So, please don't assume that I hold any opinion in any matters concerning this case and please don't reach

any conclusion that I may have some attitude or that I may tend to favor one side or another. I do not.

Of course, as I told you earlier, the indictment here itself is not evidence of the crimes charged. Instead, an indictment is merely the method or procedure under the law whereby persons accused of crimes by a grand jury are brought into court to have their guilt or innocence determined by a trial jury, such as yourselves, and, therefore, the indictment must be given no evidentiary value but shall be treated by you only as an accusation.

It is not evidence or proof of a defendant's guilt and no weight or significance whatsoever is to be given to the fact that an indictment has been returned against the defendants. They each pleaded not guilty and, thus, the Government has the burden of proving the charges beyond a reasonable doubt.

A defendant does not have to prove his or her innocence. On the contrary, he or she is presumed to be innocent of the accusations contained in the indictment. This presumption of innocence was in his or her favor at the start of the trial, as I believe I told you before. It continued in the favor of each defendant throughout the entire trial and it is in his or her favor now and remains in his or her favor during the course of your deliberations

in the jury room.

The presumption of innocence is removed only if and when you, the jury, are satisfied that the Government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt; and, of course, unless you are so convinced, you must find the defendant whose case you are then considering not guilty.

Now, it is somewhat cumbersome, members of the jury, in speaking of the defendants on trial in this case continuously to use the expression "he" or "she" or "his" or "her" and for brevity and simplicity, I think I may begin simply to use the expression "he" from time to time. I may forget to use the expressions "he" or "she" or "him" or "her," and I trust every member of the jury will recognize that when I am talking about a defendant, I am talking about both defendants and if I simply use the masculine pronoun "he," what I am saying with respect to rules of law and the like applies equally to both defendants. If I don't continuously and correctly use the double pronoun, I hope you will be understanding in that regard.

The question naturally comes up, what is a reasonable doubt?

Members of the jury, those words almost define

themselves. That is a doubt founded on reason, arising out of the evidence in the case or out of lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence, and reasonable doubt is a doubt which appeals to your reason, to your judgment, to your common sense and your experience.

It is not caprice or whim or speculation or conjecture or suspicion and it is not an excuse to avoid the performance of an unpleasant duty and it is not sympathy for a defendant.

If after a fair and impartial consideration of all the evidence, you can candidly and honestly say you are not satisfied of the guilt of a defendant as to a count in the indictment and that you do not have an abiding conviction of a defendant's guilt of any particular charge, in sum, if you have such a doubt as would cause you as prudent persons to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt and in that circumstance, it is your duty to acquit that defendant to that count.

On the other hand, if after such an impartial and fair consideration of all the evidence, you can candidly and honestly say you do have an abiding conviction of a defendant's guilt, such a conviction as you would be willing

to act upon in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt and under those circumstances, it is your duty to convict.

Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few people, however guilty they might be, would ever be convicted because it is practically impossible for a person to be absolutely and completely convinced of any disputed fact which by its nature is not susceptible to mathematical certainty; and for that reason, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

For your guidance in considering the evidence you have here, I must tell you there are two classes of evidence recognized and admitted in the courts of justice, upon either of which the jurors may find an accused guilty of a crime. One is called direct evidence and the other is called circumstantial evidence.

Direct evidence tends to show the fact in issue without any need for any other amplification, although, of course, there is also the question as to whether it is to be believed.

Circumstantial evidence is evidence that tends to show facts from which the fact in issue may reasonably be inferred. It is evidence which tends to prove the fact at issue by proof of other facts which have a legitimate tendency in your mind to lead you to infer that the facts sought to be established are true.

There is a traditional example that is a very simple one. Sometimes it is difficult if you are looking out a window to tell whether it is raining outside or not, but if you look out the window and see that the people passing by in the streets have their umbrellas up, you will usually come to the conclusion that it must be raining.

You have direct evidence. The evidence of your own senses that the umbrellas are up, even though you can't see the rain, and that evidence of the umbrellas being up constitutes circumstantial evidence from which you are entitled to conclude that it is raining.

In other words, circumstantial evidence consists of facts proved from which the jury may infer by a process of reasoning other facts in issue. Circumstantial evidence, if believed, is of no less value than direct evidence for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant whose case you are considering before you may convict him.

During this trial, you have heard some transcriptions or tapes of telephone conversations and I instruct you that as a matter of law, the use of the tape recorder as it was used in this case is legal and permissible.

Obviously, a party to a telephone conversation can testify as to what he said in the telephone conversation and, accordingly, for that reason, it is perfectly proper to have a transcript or tape which can also prove what was said.

The tape is admitted into evidence to corroborate the oral testimony of the witness who was a party to the conversation, in this case Detective Angel Rodriguez, and that was what was sought to be done in this case and I wish to assure each of you jurors that by giving a verdict here, you are not asked to determine whether or not you agree with the policies or the laws generally relating to what is known as eavesdropping.

Putting it another way, if you are satisfied beyond a reasonable doubt, as I have already defined reasonable doubt to you, that either defendant committed one or more of the separate offenses charged in this indictment, you must find that defendant guilty even though you believe that the defendant was apprehended, in some

measure, through the use by the Government of recording facilities or tapes or transcripts.

You will consider what weight is to be given to the evidence on the tapes in the same way you will consider the weight and significance of all the other evidence in the case.

As I told you at the time we received the tapes in evidence, the typewritten transcripts which were also received by you are not necessarily the best evidence of what is on the tapes but, rather, your knowledge and recollection of what you personally have heard is controlling in case there is a difference between what you hear and what has been typed by the person who made up the transcripts, and these transcripts are permitted to assist you in listening and in understanding the tapes when you hear them.

In this particular case, the transcripts were also permitted to translate into English that portion of the conversations which were spoken in Spanish and if you will recall, it was stipulated that the young lady who made the transcripts was a capable and knowledgeable person in both languages and that she exercised her best efforts to make a fair and complete translation and you may treat such stipulation with the same force and effect as if the young

lady who made the transcripts was brought in here and testified to that effect under oath.

Now, a word about admissions. Evidence relating to any statement claimed to have been made by a defendant outside court and after a crime has been committed should be considered with caution and weighed with care and such evidence should be disregarded entirely unless the other evidence in the case convinces you beyond a reasonable doubt that the statement was knowingly made.

Again, a statement is knowingly made if it is done voluntarily and intentionally and not because of mistake or accident or some other innocent reason or because of some improper cause.

In determining whether any statement claimed to have been made by a defendant outside of court and after a crime has allegedly been committed was knowingly made, you should consider the age, training, education, occupation and physical and mental condition of the defendants and the nature of his or her treatment while in custody or under interrogation as shown by the evidence in the case, as well as the other circumstances shown by the evidence surrounding the making of the statement, including whether before the statement was made that defendant knew or had been told or understood that he or she was not obligated or required to

make a statement claimed to have been made by him or her, that any such statement could be used against him or her in court and that she or he was entitled to the assistance of counsel before making any statement and if without money or means to retain counsel, an attorney would be appointed to advise and represent such defendant free of cost or obligation.

If the evidence in the case does not convince you beyond a reasonable doubt that the statement was voluntarily and intentionally made, you should disregard it. On the other hand, if the evidence shows beyond a reasonable doubt that the statement was in fact voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against that defendant only.

You may not consider the statement of the defendant Reyes as any evidence whatever of the guilt of the defendant Rodriguez and you may not consider the statement of Rodriguez as any evidence whatsoever of the guilt of Reyes.

In this regard, you should bear in mind that admissions by a defendant are among the most effectual proofs known to the law and with respect to a party making an admission, it constitutes the strongest evidence of the facts stated in the admission.

If you are satisfied that an admission of guilt was knowingly and voluntarily made under the circumstances previously mentioned and after having received the warnings required by the law previously mentioned, then you are entitled to give it great weight as to the particular defendant who made the admission.

In this trial, the Government has no duty to call in witnesses whose testimony would be merely cumulative. There is no presumption against the Government from its failure to call witnesses if it should appear to you that their testimony would be repetitious of other testimony in the case or of no greater value than that of witnesses who have testified, or if it should appear to you that their testimony would be irrelevant.

Specifically, the Government had no duty to call Louis Lopez or his wife as witnesses. It does not appear from the evidence that Mr. Lopez was present at any of the transactions or crimes alleged in the indictment and, rather, it appears that at that time he was in a federal prison in connection with a totally unrelated charge.

Mr. Lopez and his wife were equally available to both sides and could have been called as witnesses by anyone who thought he should do so and both sides have the right to ask witnesses to submit to interviewd at any time

before or during the trial and to have subpoenas issued, or writs in the case of a person in prison, requiring him to be brought to court.

Of course, the law dows not impose upon any defendant the duty to call as witnesses any persons who may appear to have some knowledge of the matters in question and, accordingly, no inference follows adverse to anyone from the failure to call Mr. Lopez or his wife as witnesses and you are to decide the case based on the evidence that is before you or upon the lack of evidence and not upon evidence that might have been brought before you.

In determining what evidence you will believe, you must make your own evaluation of the testimony given by each of the witnesses you heard and determine what you believe to be the truth and the degree of weight you choose to give to that testimony.

The testimony of a particular witness may fail to conform to the facts as they appear because the witness is intentionally telling a falsehood or because the witness did not accurately see or hear what he testified about or because his recollection of the event is faulty, because he has not expressed himself clearly in giving testimony, and there is no magic formula by which you can evaluate testimony.

You bring to this courtroom all the experience and background of your lives. In your everyday affairs, each of you determine for yourselves the reliability of statements made to you by other persons. The same tests you use in your everyday dealings are the tests which you apply in your deliberations. You use your common sense.

You may, of course, consider the interest or lack of interest of any witness in the outcome of a case. A witness who is interested is not necessarily unworthy of belief but interest is a factor or a possible motive which you may consider in determining the weight and the credibility to be given to his testimony.

In weighing testimony, you may consider whether the testimony of a witness is corroborated wholly or in part by the testimony of others or by documents or by exhibits.

You may consider possible bias or prejudice of a witness, if there be any, the manner or the demeanor shown by the witness in giving his testimony on the stand, the opportunity he had to observe the facts concerning which he testifies and the probability or improbability of the testimony in the light of all the other events in the case.

You may also consider whether a witness had any motive to lie.

These are all items to be taken into your consideration in determining truthfulness and weight, if any, which you will assign to that witness' testimony.

If such considerations make it appear that there is a discrepancy in the evidence, you will have to consider whether this may be reconciled by fitting the testimony of two or more witnesses together and if that is not possible, you will then have to determine which of the two conflicting versions you will accept.

If you find any witness has willfully testified falsely as to a material fact, you may, but you need not, disregard the entire testimony of that witness on the principle that one who testifies falsely about one material fact may testify falsely about everything. But you are not required to consider such a witness as totally unworthy of believe. You will accept so much of the testimony as you deem true and you will disregard what you believe is false.

You, as sole judges of the facts, determine which of the witnesses you will believe, what portion of their testimony you will accept and what weight you will give to it.

Now, in every criminal case, there is a rule which every defendant has the privilege and the right to

rely on and that is the rule that no defendant is compelled to take the witness stand or offer any testimony or bring forward any witnesses. By pleading not guilty, each defendant has in effect denied the charges on which he or she is being tried and has put into issue every material fact of the accusation against that defendant stated in the indictment.

It is the Government that must prove them guilty beyond a reasonable doubt and they can't be required to testify or to disprove anything. All accused persons have the right to stand mute and the fact that the defendants do not take the stand in their defense may not be considered by you as any indication of guilt or as an admission of guilt or as any evidence of guilt or as a basis for any inference or conclusion adverse to a defendant.

The presumption of innocence, the Government's burden of proving guilt beyond a reasonable doubt, have already been explained to you by me in the course of these instructions.

The defendants did not come forward as witnesses or take the witness stand and this was their right, and I charge you that you must not allow this fact in any way to prejudice them nor may you consider it as any indication or basis for any inference of guilt.

Now, a word about the expert witness, the chemist who testified here.

The rules of evidence ordinarily do not permit witnesses to testify as to their opinions or conclusions but there is an exception to this rule as to what are called expert witnesses.

A witness who by education and experience has become expert in some art or science or profession or calling, such as the narcotics chemist who testified before you, may state his opinions as to relevant and material matters in which he professes to be expert and he may also state his reasons for his opinions.

You should consider any expert opinions received as evidence in this case and give them such weight as you think they deserve. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience or if you conclude that the reasons given in support of the opinion are not sound or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness is no different from any other witness and you are at liberty to accept or reject any part of his testimony

Now, members of the jury, the indictment in this

case contains three counts and each count charges a separate crime and they must each be considered separately and you will be asked to give a separate verdict as to each count and where a count names both defendants, you will be asked to give separate verdicts as to that count.

The indictment names seven defendants in all in Count 1 but Antonio Reyes and Brunilda Rodriguez are the only defendants on trial before you. They are the only persons whose case you will be asked to decide in your verdict, although, as I will explain to you shortly, in considering their respective cases, you may have to determine the nature of the participation, if any, of the other named defendants.

In this connection, as I told you earlier, you are not to concern yourself with or speculate upon the reasons why the other defendants are not presently on trial before you or why these defendants are on trial before you at this time together or in the absence of the others.

These are matters which are solely for the Court and they are not a matter for your concern at all as to the status of the cases with respect to the other defendants.

In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt of the defendant on trial before you must be proved by the

Government beyond a reasonable doubt separately with respect to each defendant and solely on the evidence presented against him or her or the lack of evidence. The case of a defendant stands or falls upon the proof or the lack of proof of the charge against him or her and not against somebody else.

I will now read the indictment:

The grand jury charges:

1. From on or about the first day of June 1973, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York -- and I might say to you that that date of filing is April 11, 1974 -- Ricardo Quiles, Victor Soto, Hector Soto, Santiago Medina, Antonio Reyes, Brunilda Rodriguez and Joseph Cacciola, the defendants, and others to the grand jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841-A(1) and 841-B(1)(a) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule 1 and 2 narcotic drug controlled substances, the exact amount thereof being to the grand jury unknown, in violation of

Sections 812, 841-A(1) and 841-B(1)(a) of Title 21, United States Code.

Overt Acts. In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about September 17, 1973, the defendants Santiago Medina and Antonio Reyes were in Apartment No. 6 at 1800 Monroe Avenue, Bronx, New York.

2. On or about October 15, 1973, the defendant Brunilda Rodriguez introduced the defendant Hector Soto to an undercover officer of the Drug Enforcement Administration Task Force.

3. On or about October 15, 1973, the defendants Hector Soto, Brunilda Rodriguez and Ricardo Quiles were in Apart 409 at 240 East 175th Street, Bronx, New York.

4. On or about October 16, 1973, the defendants Hector Soto and Victor Soto had in their possession approximately one-half ounce of heroin.

5. On or about October 26, 1973, the defendant Ricardo Quiles had in his possession approximately 53 grams of heroin.

6. On or about November 6, 1973, the defendant Ricardo Quiles met with the defendent Joseph Cacciola.

That is the end of Count 1, which herein for convenience is referred to as the conspiracy count because

it is a count which charges the crime of conspiracy which I will mention in a moment.

Count 2 is a substantive count, so-called to distinguish it from a conspiracy count. Count 2, members of the jury, applies only to the defendant Antonio Reyes. The defendant Brunilda Rodriguez is not to be considered by you with respect to the second count of the indictment because she is not charged in that count.

The second count reads as follows:

The grand jury further charges on or about the 17th day of September 1973, in the Southern District of New York, Santiago Medina and Antonio Reyes, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule 1 narcotic drug controlled substance, to wit, approximately 26.14 grams of heroin.

The third count of the indictment is also a substantive count. This count applies to both of these defendants presently on trial before you.

The third count reads as follows:

The grand jury further charges on or about the 15th day of October 1973, in the Southern District of New York, Antonio Reyes, Brunilda Rodriguez, Hector Soto and Ricardo Quiles, the defendants, unlawfully, intentionally

and knowingly did distribute and possess with intent to distribute a Schedule 1 narcotic drug controlled substance, to wit, approximately 14.66 grams of heroin.

Now, as has previously been mentioned to you, the indictment here charges these defendants and others with violation of the federal narcotics laws. The Comprehensive Drug Abuse Prevention Act of 1970 was passed by Congress because of a concern with the illegal distribution of narcotic drugs which have a substantial and detrimental effect on the health and welfare of the people of this country.

The part of this act which is applicable to the charges here is called the Controlled Substances Act, which became effective on May 1, 1971. It is not necessary for you in the performance of your duties as jurors to remember the names of the acts or the section numbers or their applicable parts. It is sufficient if you remember the conduct which the acts forbid and the essential elements of the separate offenses here charged.

The term "controlled substances" as used in this act refers to any drug included in one of five schedules which are contained in the Controlled Substances Act. Heroin or heroin hydrochloride, as it is sometimes called, is one of the drugs listed on Schedule 1.

Among other things, the statute makes it unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute any controlled substance listed on those schedules, including heroin. In addition, any person who conspires with one or more other persons to commit any such offense commits a separate crime.

Furthermore, Section 2 of Title 18 of the United States Code contains the following provision:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

That is the end of the quotation.

As I mentioned a moment ago, a conspiracy to commit a crime is an entirely separate and distinct offense from the substantive crime, which is the objective of the conspiracy. The essence of the crime is an agreement or understanding by two or more persons to violate other federal laws.

Thus, if a conspiracy exists, even if it should fail of its purpose, it is still punishable as a crime. And in a conspiracy charge, there is no need to prove an actual violation of the narcotics laws, although if you find that the persons who were members of the conspiracy

actually violated the narcotics laws in furtherance of the objectives of the conspiracy, you may consider that as evidence that the conspiracy exists and perhaps as evidence that such persons as you may find violated it were members of the conspiracy.

Conspiracy is sometimes referred to as a partnership in crime. It involves collective or organized group action. It presents a greater potential threat to the public interest than the illegal activity of a single individual, and group association or organized activity renders detection more difficult than in the instance of a single wrong-doer, and for this and other reasons, the Congress made a conspiracy an offense entirely separate, distinct and different from the violation of law which may be the objective of the conspiracy.

Since the essential elements which the Government must prove before a conviction may be had on any substantive count are different from the essential elements of the crime of conspiracy, it is essential for us to consider each separately.

I think it might be clearer for you if I first discuss the substantive narcotic counts, that is, Counts 2 and 3, and then I will come back and mention the elements of conspiracy to you.

Counts 2 and 3 charge the defendants therein named respectively with the distribution and possession with intent to distribute of various amounts of heroin. Before you may find a defendant guilty of the crime charged in either of these counts, you must be satisfied beyond a reasonable doubt that the Government has proved as to that defendant and as to the count which you are then considering, be it Count 2 or Count 3, the following elements, and I ask you to pay very careful attention to the elements:

First, that on or about the dates charged in the count, whether it be 2 or 3, that you are then considering, a defendant named in that count, whose case you are then considering, did distribute or possess with intent to distribute a narcotic drug controlled substance, in this case heroin.

The second element, that he or she did so unlawfully, intentionally and knowingly.

Third, that the substance charged to have been possessed or distributed in that count was in fact a narcotic drug controlled substance, in this case heroin.

I would like to say a few additional words as to each of these elements, but those are the three elements.

You will note that in the first element of the

offense, "distribute and posses with intent to distribute" is the phrase used and what does that mean?

It is sufficient if you find beyond a reasonable doubt that the defendant whose case you are then considering in a substantive count either distributed or possessed with intent to distribute the narcotic drug. Either of those two will suffice.

The word "distribute" means the actual, constructive or attempted transfer of the heroin from one person to another, and the word "possess" has its common everyday meaning -- that is, to have something in your hands or within your control.

Possession may be of two types: A person may have actual possession or constructive possession. Actual possession means that a defendant knowingly has personal, manual or physical control of the drug.

Constructive possession means that although the drugs are in the physical possession of another person, the defendant whose case you are considering has the power to exercise control over them or over their distribution or to direct the person that actually has them with respect to the movement of the drug or to cause that person to deliver the drug or have it delivered.

In other words, to possess something, you need

not have it in your hand or in your pocket or in your house. It is sufficient to constitute possession if it is within your power to exercise control over the drug and, if so, that is possession.

As to the second element, before you may convict defendant Reyes of the crime charged in Count 2 of the indictment or convict either of the defendants of the crime charged in Count 3, you must find beyond a reasonable doubt that he or she acted unlawfully, intentionally and knowingly.

I direct your attention to the words "unlawfully," "knowingly" and "intentionally." The question is, what do those words mean?

First, let me say to you what they do not mean. They do not mean that the Government has to show that the defendant knew he or she was breaking a particular law before there can be conviction of a crime.

They do not mean the Government has to show a defendant intended to profit at the expense of any other person nor do they have anything to do with the defendant's personal or private reasons for violating the statute and if, after considering all the evidence in accordance with my instructions to you, you come to the conclusion that the defendant you are considering violated the statute, then,

in that event, the defendant's personal or private reasons for violating the statute are of no consequence, as far as guilt is concerned.

I instruct you that these words, "unlawfully," "knowingly" and "intentionally" mean deliberately. In other words, you must be satisfied beyond a reasonable doubt that the defendant acted with knowledge, consciously and in the free exercise of his or her will.

The words "knowingly" and "intentionally" are opposed to the idea of an inadvertent or accidental occurrence. An act is done knowingly if it is done voluntarily and purposefully and not because of some mistake, accident, mere negligence or some other innocent reason.

An act is done intentionally if it is done knowingly and deliberately. "Intentionally" doesn't mean that the defendant in addition to knowing what he or she was doing must also suppose that he or she was breaking the law.

As to the word "unlawfully," of course it is not necessary that the defendant knew he or she was violating the particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that the defendant was aware of the general unlawful nature of the act of dealing

in or distributing heroin.

Knowledge and intent exist in the mind. It is impossible to look into a person's mind and see what went on there and the only way you have for arriving at that decision on these questions is to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question.

Direct proof is not necessary. Knowledge and intent may be inferred by the jury from all the surrounding circumstances and as far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable or ordinary consequences of his or her acts.

As to the third element, the Government alleges the substances transferred in these two counts were in fact narcotic drug controlled substances, namely, heroin, and I charge you as a matter of law that heroin is a Schedule 1 narcotic drug controlled substance.

In determining whether the exhibits which have been admitted in evidence here, the white powder in the bags that have been marked as exhibits, are heroin, you may consider all of the circumstances surrounding any dealings

which you may find was had with the white powder and also may consider the testimony of the forensic chemist and all other testimony in the record of this trial.

Finally, it is not necessary for the Government to show that a particular defendant physically committed the crime himself. As I mentioned to you earlier, the law provides that a person who aids and abets another to commit a crime is just as guilty of that crime as if he or she committed it by himself or herself.

Accordingly, you may find the defendants Antonio Reyes or Brunilda Rodriguez or either of them guilty of the crimes charged against them in these particular counts if you find beyond a reasonable doubt that other named defendants listed in that count, which you are then considering, committed the offense with which charged in that count and that the defendant on trial, whose case you are considering, aided and abetted the other person.

For example, if you find in Count 2 beyond a reasonable doubt that Santiago Medina committed the crime charged, the unlawful distribution of and possession with intent to distribute approximately 24 grams of heroin on or about the 17th of September 1973, and you find beyond a reasonable doubt that Antonio Reyes aided and abetted Santiago Medina to do this, then on that basis, you may

find Antonio Reyes guilty with respect to Count 2.

Similarly, with respect to Count 3, if you find beyond a reasonable doubt that either Hector Soto or Ricardo Quiles committed the crime charged therein, the unlawful distribution of and possession with intent to distribute 14 grams of heroin on or about October 15, 1973, and you find beyond a reasonable doubt that Antonio Reyes or Brunilda Rodriguez aided and abetted Mr. Soto or Mr. Quiles or both of them or either of them, then you may find such defendant on trial before you guilty as to that count.

Again, I caution you, you have to consider the evidence with respect to each defendant separately.

To determine whether a person on trial before you aided and abetted the commission of the crimes charged in Counts 2 and 3 by others, you ask yourself these questions:

Did he or she participate in it as something he or she wished to bring about? Did he or she associate himself or herself with the venture? Did he or she seek by his or her action to make it succeed?

If so, the person who did that and did it knowingly and willfully is an aider and abettor and, therefore, guilty just as much as the person who was aided and abetted.

However, I charge you that knowledge that a crime

is being committed, even when coupled with presence at the scene without more is insufficient to prove aiding and abetting or to prove the crime of conspiracy, which I will now discuss.

Leaving the substantive counts, I am going back for a moment to Count 1, the conspiracy charge:

You will recall I have already told you this is an entirely separate and distinct crime from the crime charged in the other counts of the indictment, or the substantive counts. I also told you that this fact does not preclude you from considering proof of an actual violation as evidence that a conspiracy existed.

Now, before you may convict a defendant under this count, Count 1, the following are the essential elements each of which must be established beyond a reasonable doubt. These are the elements of Count 1:

First, that the conspiracy charged existed, that there was a conspiracy.

Second, that the defendant whose case you are considering knowingly and willfully associated himself or herself with the conspiracy, joined it.

Third, that one of the conspirators, any conspirator, committed at least one of the overt acts set forth in the indictment, which I previously read to you,

the list of overt acts, at or about the time or place alleged.

If the Government fails to establish each essential element of the conspiracy charge beyond a reasonable doubt, you must acquit the defendant as to whom the Government has failed to establish any such element in this count. If the Government succeeds as to a particular defendant, your duty is to convict that defendant on Count 1.

I will take up the first element with you, which is the question of the existence of the conspiracy. The gist of the crime of conspiracy is the unlawful combination or agreement of two or more persons to violate the law. Whether or not the defendants accomplished what it is alleged they conspired to do is immaterial on the question of their guilt or innocence.

A conspiracy has sometimes been called a partnership for criminal purposes in which each member becomes the agent of every other member.

You may not treat Detective Angel Rodriguez, however, as a co-conspirator in my discussion hereafter. The undercover policeman cannot be deemed a member of the conspiracy.

To establish existence of a conspiracy, the

Government is not required to show that two or more persons sat around a table and entered into a solemn compact orally or in writing stating that they formed a partnership to violate the law, setting forth details of their plans or the means by which the unlawful project is to be carried out or the part to be played by each conspirator. Indeed, it would be extraordinary if there were any such formal document or specific oral agreement.

Common sense will tell you when in fact two or more persons undertake to enter into a criminal conspiracy, much is left to unexpressed understandings.

Conspirators usually do not reduce their agreements to writing or acknowledge them before a notary public nor do they publicly broadcast the plans. From its very nature, a conspiracy is almost invariably secret in its origin and execution. But it is sufficient if two or more persons in any manner through any contrivance, impliedly or tacitly, come to a common understanding to violate the law together. Express language or specific words are not required to indicate assent to or attachment to a conspiracy or joining in a conspiracy.

In determining whether there has been an unlawful agreement, you may judge the acts and conduct of the alleged co-conspirators which are done to carry out an

apparent criminal purpose. You can rely on the adage that actions speak louder than words. Usually the only evidence available is that of disconnected acts which, however, when taken together in connection with each other, may show a conspiracy to secure a particular result just as satisfactorily and conclusively as more direct proof.

The offense is complete when the unlawful agreement is made and any single overt act to effect the object of the conspiracy is thereafter committed in the Southern District of New York by at least one of the co-conspirators. Proof concerning the accomplishment of the conspiracy may be the most persuasive evidence of the existence of the conspiracy itself.

The success of the venture, if you believe it was successful may be the best proof of the existence of the agreement.

As I previously mentioned to you, the Government doesn't have to show that a defendant intended to profit from the unlawful activity charged in the indictment. However, you may consider the financial stake of any defendant, if any, in the venture in determining whether a conspiracy existed and whether that defendant was a member of it. And you may consider the absence of a financial stake in the same fashion.

Furthermore, if the Government has proven to your satisfaction beyond a reasonable doubt that a crime has been committed, it is of no concern of yours whatsoever whether the defendant whose case you are considering is a small pebble, as the expression has been used during this trial, or a major factor in the conspiracy.

Different people play different parts in a narcotics conspiracy and a person who knowingly and willfully plays a small part is just as guilty as a core member.

A person's station in life may not be urged as a defense to a criminal charge and it is no concern of yours in reaching your verdict whether you regard anybody as a loser or a winner in the game of life or whether you think that anyone is street-wise or naive or whatever, for if the crime has been proven to have been committed beyond a reasonable doubt, your verdict and the duty imposed upon you in finding your verdict is totally unrelated to any such matters.

Now, in determining whether the conspiracy charged in this indictment actually existed, you may consider the evidence of the acts and conduct of the alleged co-conspirators as a whole and the reasonable inferences to be drawn from such evidence.

If upon such consideration of the evidence, you find beyond a reasonable doubt that the minds of the alleged co-conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in the furtherance of the unlawful scheme alleged in the indictment -- that is the distribution of heroin -- then proof of the existence of the conspiracy is complete.

If you do conclude that there was a conspiracy as charged, you must next determine as to each defendant on trial whether he or she was a member of that conspiracy, whether he or she participated in the conspiracy with knowledge of its unlawful purposes and in furtherance of its unlawful objectives.

To find that a defendant was a member of the conspiracy, you must find that he or she knowingly and intentionally participated therein, as I have explained those terms "knowingly" and "intentionally" to you before.

I previously told you that mere knowledge by a defendant of the existence of the conspiracy or of an illegal act on the part of a co-conspirator or presence at the commission of such an act or merely being associated with one or more of the conspirators is not sufficient to establish membership in the conspiracy.

The Government must establish beyond a reasonable doubt that the defendant whose case you are considering, aware of its basic purposes and objects, distribution of heroin, entered into the conspiracy with a specific criminal intent -- that is, for the purpose of violating the law -- making the conspiracy succeed, getting the goods to market -- and if a defendant with understanding of the unlawful character of the conspiracy intentionally engages, advises or assists for the purpose of furthering the illegal undertaking, he or she thereby becomes a knowing and willful participant.

In determining whether a defendant was a member of the conspiracy, you may consider all of the evidence before you except, as I previously mentioned to you, statements made after arrest can only be considered as to the person who allegedly made the statement.

The guilt of a conspirator is not governed by the extent or duration of his participation in the conspiracy or whether he or she had knowledge of all its operations. Even if one joined a conspiracy after it was formed and was engaged in it in a degree more limited than that of others, that person is equally culpable so long as he or she was a knowing and willful co-conspirator.

Each member of a conspiracy may perform separate

and distinct acts at different times, different places and some may play major roles while others have minor roles. Thus, if you find that either defendant was a conspirator and however limited that defendant's role in furthering the objectives of the conspiracy, he or she is responsible for all that is done in furtherance thereof during its continuance and during his or her participation.

It is not even required that all the conspirators know each other. They may not have previously associated together. A defendant may know only one other member of the conspiracy but if he or she enters into an unlawful agreement with that other member of the conspiracy, he or she becomes a partner thereto without being acquainted with all of the other partners.

The question is, did the defendant join one or more others in the conspiracy with awareness of at least some of its basic purposes and aims and, if so, the law treats that defendant as a full member of the conspiracy and he or she becomes liable for the acts of the other conspirators during his or her membership.

A few more words about conspiracy. I want to point out to the jurors that the contention of the Government and one of the elements it must prove to your satisfaction beyond a reasonable doubt before any defendant

may be convicted on Count 1 is that a single, overall conspiracy of the nature charged in the indictment existed.

I use the words "single, overall" in contrast to the concept of several, separate and independent conspiracies involving various groups of unrelated co-conspirators.

Proof of several separate conspiracies is not proof of a single, overall conspiracy charged in the indictment unless one of those several conspiracies which is proved is a single conspiracy which the indictment charges.

What you must do is determine whether the conspiracy charged in the indictment existed between two or more of the conspirators named in the indictment. If you find that no such conspiracy existed, then you must acquit. If you are satisified that such a conspiracy existed, you must then determine who the members of that conspiracy were.

If you find that a particular defendant was a member of another conspiracy, not the one charged in the indictment, then you must acquit that defendant. In other words, to find a defendant guilty, you must find that he or she was a member of the conspiracy charged in the indictment and not some other conspiracy.

In determing whether any defendant was a party to the conspiracy, each is entitled to individual consideration

of the proof respecting him or her including any evidence of his or her knowledge or lack of knowledge, his or her participation in key conversations or actions and his or her participation in the plan, scheme or arrangements for distribution of heroin alleged in the indictment.

Now, the Government's contention is that these two defendants Antonio Reyes and Brunilda Rodriguez, the persons named in the indictment other than these two defendants, and perhaps others, conspired together in a single heroin distribution scheme during the approximate periods referred to in the indictment.

It is not inconsistent with the concept of a single conspiracy that persons may join after the inception or they may withdraw while the conspiracy continues among the remaining members, and in determining whether there was proof of a single conspiracy alleged in the indictment, you may consider what the evidence shows as to changes in personnel and activity.

You may find a single conspiracy even though there were changes in personnel and activities, providing you find that some of the conspirators continued throughout the life of the conspiracy and that the purpose of the conspiracy continued to be that charged in the indictment.

The fact that the parties are not always identical

does not mean in itself that there are separate conspiracies but it is a fact which you may consider.

In other words, if at all times, the alleged conspiracy had the same overall primary purpose and the same nucleus of participants, the conspiracy would be the same basic scheme even though in the course of its operation, additional conspirators joined in and performed additional functions to carry out the scheme while others who were not active or had terminated their relationship or, as we heard in the case of Santiago Medina, had been arrested and taken out of the conspiracy for that reason.

Assuming, first, that you found that the alleged conspiracy existed and, second, that the defendant whose case you were then considering was a member of that conspiracy, I am now going to mention the third element which is the requirement of an overt act.

An overt act is any step, action or conduct which is taken to achieve, accomplish or further the objective of the conspiracy.

The purpose of requiring proof of an overt act is that while parties might conspire or agree together to violate the law, they may change their mind and they may do nothing to carry their illegal purpose into effect.

In that case, it won't constitute an offense, so

the law requires, in addition to the talk or the understanding or the conspiring, that there be at least some overt act committed within the judicial district in which the case is tried to show that the parties really did engage in going forward with their conspiracy. The overt act may be neither a criminal act nor the crime which is the subject of the conspiracy.

I have referred to the district. The Southern District of New York, members of the jury, as I am sure all of you know, includes Manhattan and the Bronx. It also includes a number of New York counties to the north.

You must be satisfied that at least one of the overt acts which I have previously read to you was committed in furtherance of the alleged conspiracy and within that geographic area.

Now, obviously, for Brunilda Rodriguez to introduce Hector Soto to the undercover policeman in itself may well be innocent conduct but if, as the Government contends, she introduced Hector Soto to the agent for the purpose of selling narcotic drugs, then this introduction sheds its innocent character. It is an overt act by alleged conspirators in furtherance of the objective of the conspiracy.

It is not necessary for the Government to prove

that each member of the conspiracy committed or participated in any particular overt act since the act of anyone done in furtherance of the conspiracy becomes the act of all the others.

Also, the Government is not required to prove each of the overt acts listed in the indictment. It is sufficient if it proves the commission of at least one of the acts within the Southern District of New York at or about the time alleged and, of course, the overt act need not have occurred at the precise time and place alleged. It is sufficient if it occurred within close proximity to the alleged time.

The indictment charges that the conspiracy existed from on or about the 1st day of June 1973, and continuously thereafter up to and including the date of the filing of this indictment, which, as I mentioned before, was April 11, 1974, but it is not essential that the Government prove that the conspiracy started and ended on or about those specific dates.

It is sufficient if you find that in fact the conspiracy that was formed existed for sometime within the period set forth in the indictment and that at least one of the overt acts was committed during that period and in furtherance thereof.

I would state to you also that upon the arrest of these defendants, the conspiracy as a matter of law ended and I am certain thatyou will find from the exhibits that that date was considerably prior to April 11, 1974.

A conspiracy once formed is presumed to have continued until its objectives are accomplished or there is an affirmative act of termination by its members or it is terminated by discovery and when a person is found to be a member of the conspiracy, that person is presumed to continue his or her membership until its termination unless there is affirmative proof of withdrawal or disassociation.

A few general comments:

The law permits the Government to use undercover agents and it is perfectly proper for them to enlist whatever aid they can from informants and dress up in sharp clothing and travel around the City of New York in fancy Government automobiles pretending to be traffickers in illegal narcotics or pretending to be persons who want to get into business as drug dealers.

That is a time-tested and traditional way of detecting crime, particularly crime such as narcotics dealing which is carried on in secrecy and ordinarily only carried on between people believed to be participants in the illegal operations. Nor would it be possible to uncover a

narcotics conspiracy without the cooperation of informers who have themselves been arrested for narcotics violations or other crimes, such as Lopez apparently was, and without some introduction by the undercover agent into the group of conspirators, the conspiracy might go undetected.

From time immemorial, the law has permitted the use of informers, provided the constitutional rights of a defendant are not violated. So that whether or not you approve the use of an informant in an effort to detect crime or whether or not you approve the conduct of Angel Rodriguez in pretending to be the brother of Lopez and pretending to want to get into the narcotics business in order to raise a sum of money to provide for Lopez's bail is not a matter which should enter into your deliberations.

Now, I am going to discuss the question of entrapment. This discussion applies only to the defendant Antonio Reyes who asserts that he was a victim of entrapment as to both of the crimes charges against him in this indictment.

The word "entrapment," which I have just used is a legal term; it has a technical meaning, not that of popular speech or colloquial usage. Therefore, I will now explain to you the meaning of the word "entrapment" as it is used in the law.

Criminal activity, as I mentioned before, is such that sometimes stealth and strategy or even lying are necessary methods to be used by law enforcement officers. The function of law enforcement is not only the prevention of crime but also the detection and apprehension of criminals.

Manifestly, that function does not include the manufacturing of crime. The defense of entrapment is made available to a defendant and is based upon the policy of the law not to ensnare or entrap innocent persons into the commission of a crime. But a line must be drawn, members of the jury, between the entrapment of the unwary innocent and the trap for the unwary criminal.

The fact that the Government officials or their agents or a man like Angel Rodriguez merely affords opportunities to one who is ready and willing to violate the law when thatopportunity presents itself does not constitute entrapment.

However, in their efforts to enforce the laws, Government officials and their agents and detectives and the like may not entrap an innocent person who except for the Government's inducementwould not have engaged in the criminal conduct charged.

Entrapment occurs only when the criminal conduct

was the product of the creative activity of the law enforcement officials or their agents or informers. That is, if they initiate, incite, induce, persuade or lure an otherwise innocent person to commit a crime and to engage in criminal conduct and if that occurs, the Government may not avail itself of the fruits of this instigation and the person so induced may not be prosecuted or may not be convicted.

In this regard, the defendant Reyes asserts that he was induced to violate the law by the activities of Angel Rodriguez, the undercover detective, which I previously mentioned.

Now, if the prosecution has satisfied you on this entire record in this case beyond a reasonable doubt that this defendant Reyes was ready and willing to commit the offenses charged and merely was waiting for a favorable opportunity to commit them, then you may find that the Government did no more than furnish a convenient opening or an opportunity for the criminal activity in which defendant Reyes was prepared to engage.

In such circumstances, you may find that the Government's undercover agent, Rodriguez, did not seduce an innocent person but merely provided the means for the defendant to effectuate or realize his own then existing purpose of dealing in narcotics.

On the other hand, if you have a reasonable doubt that the defendant would have committed the offenses charged without the Government's inducement, then it is your duty to acquit him.

Whether or not this defendant was entrapped is a question of fact which the jury must decide on all the evidence in this case.

One way the Government can show that the defendant was ready and willing to commit the offenses charged is to prove to your satisfaction beyond a reasonable doubt that the defendant either individually or acting jointly with other defendants named in the indictment had an already formed design to commit the crime for which he is charged in the particular count which you are then considering.

Another way is for the Government to show that the defendant was willing to commit the crime for which he is charged as evidenced by his ready response to the inducement, if you find there was any inducement.

A mere appeal to defendant Reyes' feelings of friendship for Mr. Lopez and his desire to assist Mr. Lopez in getting out of jail, if you find that such an appeal was made by Mr. Rodriguez, would not in itself constitute entrapment.

Whether such an appeal, if made under all the circumstances in this case, had the effect of luring or inducing an otherwise innocent person to engage in unlawful conduct are matters before you for your decision on the entire record of this case, as I have previously noted, and you should consider all the facts and circumstances insofar as they bear on whether the defendant Reyes was ready and willing to commit any of the crimes charged in the indictment at the time that he committed them, and before or without regard to any talking with him on the part of Agent Rodriguez having to do with Lopez or otherwise.

The question of entrapment applies separately to each count and it is to be decided by the jury with respect to each count based upon all the surrounding circumstances existing at the time of the alleged activity in the particular count of the indictment which you are then considering, as I previously instructed you.

It is possible that you might find as to Reyes' entrapment as to one count and not as to the other, because the other count took place at a different time or under different conditions or different inducements.

Now, that is entirely a question for the jury to decide. It is entirely an issue of fact.

Before the Government is required to prove beyond a reasonable doubt that the defendant was ready and willing to commit the offense charged, merely awaiting a favorable opportunity to commit them, the jury must first find some credible evidence in the case of Government initiation of illegal conduct.

Of course, if you find that others, such as others named in the indictment, initiated the involvement of the defendant Reyes in the conspiracy to sell -- the sale of heroin which is alleged in the indictment -- rather than Angel Rodriguez, then in that case, there would be no entrapment.

One or two more brief observations, members of the jury, and I am almost finished:

Under your oaths as jurors, you cannot allow the consideration of the punishment which might be inflicted upon a defendant if convicted to influence your verdict in any way or in any sense to enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court.

Your function here is to weigh the evidence in the case and to determine whether or not the guilt of the defendant has been proved beyond a reasonable doubt and to do so solely upon the basis of the evidence and following

the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumptions, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that a crime of this character may not be committed with impunity and the public is entitled to be assured of this.

A word about your deliberations:

Each juror is entitled to his or her own opinion and each juror should exchange views with fellow jurors; that is the purpose of jury deliberation -- to discuss and consider the evidence, to listen to the arguments of your fellow jurors, to present your individual views and to consult with one another and to reach a fair verdict based solely and wholly on the evidence, if you can do so without doing violence to your individual judgment.

Each one of you must decide the case for himself or herself after consideration with your fellow jurors but you should not hesitate to change an opinion you may hold which after discussion with your fellow jurors appears erroneous in the light of the discussion, viewed against the evidence and the law.

However, if after carefully wieghing all the evidence and listening to the arguments of your fellow jurors you entertain a conscientious view that differs from the rest, you are not to yield up your judgment simply because you are outnumbered or outweighed. Your final vote will reflect your individual conscientious judgment as to how these cases should be decided.

Now, in order to find a verdict as to any defendant as to any particular count must be unanimous.

During your deliberations, you might want to have some part of the testimony read to you or you might find that you are uncertain as to the meaning of some part of my instructions or you may wish to examine some exhibit or all of the exhibits or you may wish to read the indictment.

In any such case, I ask the foreman to send out a note asking for whatever it is which the jury desires and in sending out any such note, please do not indicate thereon how the vote of the jury may then be divided. The

Court does not want to know that and don't put it in any note.

With respect to the indictment, please remember it is merely an accusation and has no status as evidence. But if you want to send for it and read it over during your deliberations, you are entitled to do that.

Mrs. Miller is the foreman of the jury and she will send out any communications from the jury by delivering a note through the marshal and if the jury has a verdict, simply tell the marshal the jury has a verdict.

I will end by reminding you that your oath sums up your duty, and that is without fear or favor to anyone. You will well and truly try the issues between each of these defendants and the Government of the United States based solely on the evidence and the Court's instructions as to the law.

It is important to the defendants, it is important to the Government, it is important to you as jurors.

Mr. Clerk, would you swear the marshals.

(Marshal duly sworn.)

(Two alternate jurors excused.)

THE COURT: Please do not communicate with any other juror over the weekend or until after the case has been decided.

One more thing. The marshals will arrange for your lunch. You may decide that you prefer to have sandwiches brought into the jury room. On the other hand, if you wish to go out to the restaurant and have a pleasant, leisurely lunch on this day, you may do so.

I ask the foreman to please tell the marshal as quickly as you can after you get in the jury room what your pleasure is. If you do go out to a restaurant, please do not discuss the case in a public restaurant. Do your deliberations only in the jury room, where every juror can have equal participation.

Please remain seated where you are briefly while I confer with the attorneys to see if there are any additional instructions which they might like to have me mention to you or if there is anything I may not have covered in what I said so far, and, please, don't discuss the case while you are seated here in the box because I might find it proper to give you additional instructions which you may not have received as yet.

(In the robing room.)

MR. KELLY: Your Honor, I have no exception. I only wish to suggest that perhaps it should be made crystal clear that the defense of entrapment is available on the conspiracy count and the two substantive counts. There was

one point where you said it applies to both charges and there may be a mistaken belief that it is just to Count 2 and 3.

THE COURT: If you really think so.

MR. REILLY: If Mr. Levner doesn't believe that that impression was gotten across, I would withdraw the suggestion.

THE COURT: I don't think it has, but I would like to be cautious since I don't think there is evidence of entrapment in this case and I don't want to give anybody a basis. I think any juror with common sense would see it.

MR. SOLOMON: I am sure you covered it.

THE COURT: Let Mr. Levner state his position.

MR. LEVNER: My recollection is similar to his.

THE COURT: I'll tell them.

MR. LEVNER: But if you care to read the minutes --

THE COURT: I will accept your joint recollection of Mr. Reilly and yourself.

Do you want me to say anything or not?

MR. LEVNER: I would appreciate it.

THE COURT: You want me to.

MR. LEVNER: I would appreciate it.

THE COURT: I will do it.

MR. LEVNER: Nothing more.

THE COURT: You have no additional requests or exceptions?

MR. LEVNER: No, absolutely not -- I do have exception.

THE COURT: I'll take it.

MR. LEVNER: I think it was an unfair comment of the Court to particularize certain patented words that I had used in my summation in the Judge's charge to the jury and drawing an emphasis to some of my statements with respect to a defense of my client, namely, "small pebbles," "street-wise," "naive" or "otherwise," which were directly commented upon by the Judge in his charge.

THE COURT: All right. You may have an exception as to that and I would like to state my position very briefly as to it:

I would have to say that this is the first experience I have had where anyone has attempted in a criminal case in this court to assert the concept of juror nullification and I am not certain that our decided cases require me to sit silently while someone says to the jury in effect that my client is as guilty as can be, but he is small potatoes, one of life's losers and a pebble on the beach, and Cacciola is a terrible fellow, which, of course,

he is, and that although he is guilty, because he is small-time and a loser and because he has an inferior position in society or a relatively minor job -- and I might note the man does have a job, he is not on relief -- he should be acquitted, and I really think that is a perversion of what we stand for in the administration of justice and that it is within my privilege to tell the jury that small pebble or large, if he did it knowingly and willfully, he should be convicted and if he didn't, he should be acquitted, or if the Government failed to prove it beyond a reasonable doubt, he should be acquitted.

I feel very strongly about that. I did not interrupt your summation and I must say to you, I think it is wrong to come into this court and say to jurors, "Well, I have a guilty client but he is one of life's losers, his participation is slight and you jurors ought to turn him out because the policeman used a ruse to get him to do something he was delighted to do," as the tapes clearly show.

So you may have an exception but I really feel it is an improper --

MR. LEVNER: I think it is important to say one thing to you because I think I got a fair trial and I have no objection, and I don't want you to talk away from this -- it was not my intention as to the charge, your Honor.

What I wanted to show -- forgive me if I wasn't able to articulate it well enough. That was not my intention.

THE COURT: Your summation was brilliantly given. I heard exactly what you said.

MR. LEVNER: One thing, Judge. Let me just say one thing:

Street-wise in the sense of entrapment, your Honor, not upon his -- not in a cute way, not that cute way. Entrapment, that was my intention. Believe me, it was.

THE COURT: You and I have no argument, Mr. Levner. The street-wise fellow knows that when strangers come around in sharp cars and clothes and long hair that the chances are they have got to be cops.

You noticed that Mr. Solomon's client knew when the cops were down in the street and the other group that was down there in an undercover capacity and urged them not to go out in the street.

Have you covered everything? Because I want to get the jury to work.

MR. LEVNER: Did you get the word "brilliant" in there, Mr. Reporter?

MR. SOLOMON: I have no requests for exceptions,

except I think the reporter should have this marked so there could be no question but that you gave the charge as I asked, but in a modified manner.

THE COURT: Certainly. Mr. Solomon's request to charge must be marked as a Court's exhibit.

(In open court.)

THE COURT: Well, members of the jury, I knew I would make some misstatement, and I guess I did.

In discussing with you the defense of entrapment, I used the expression that it was available as to both charges and should be considered separately by you as to both charges.

That is correct, but what I really meant to say to you was as to all three charges because Mr. Reyes is named in Count 1, which is the conspiracy count, and also in Counts 2 and 3 and you will consider this question separately as to each of the three. Instead of saying both, I should have said all three.

I trust you understand the thrust of my instructions and I am sorry that I misspoke myself but in a matter of such length, it is not uncommon and I have to assure you judges don't have perfection either.

Would you please withdraw to the jury room now and commence with your deliberations.

(At 11:46 a.m., the jury retired to commence their deliberations.)

MR. SOLOMON: Would your Honor please instruct --

THE COURT: Before you begin, I have a redacted indictment which has been furnished to me by the Government in view of the most recent decision that came out in the Connecticut District Court, and I would like defendants' counsel to look at it and advise the Clerk so there will be no question as to what is to be sent in if they request it.

MR. SOLOMON: Your Honor, in view of the short conference we had yesterday about my leaving a little earlier today, if the jury --

THE COURT: Do you want to be on the record about that?

MR. SOLOMON: Yes. I want her consent on the record. Not that I may leave but that Mr. Levner may take the verdict when it comes in.

Do you have any objection on that? I have to leave about two o'clock and if the jury comes in and I am not here, Mr. Levner will ask what is going on and take care of it.

Do you agree with that? Don't shake your head. Yes or no.

DEFENDANT RODRIGUEZ: Yes.

MR. SOLOMON: I want the record protected.

(Court's Exhibit 1 marked.)

(At 12:03 p.m., a note was received from the jury.)

(Note marked Court Exhibit 2.)

(At 1:35 p.m., a note was received from the jury.)

(Note marked Court Exhibit 3.)

THE COURT: I have a note from the jury which has been marked Court's Exhibit 3. It says, "We would like the Judge to read the portions of the instructions pertaining to entrapment."

I will have the jury brought in.

(In open court, jury present.)

THE COURT: Good afternoon, members of the jury. I have your note and I will now review with you that portion of my instructions relating to the question of entrapment.

I pointed out to you first in the course of my instructions that the defendant Antonio Reyes, and this applies to him only, asserts that he was a victim of entrapment as to all three counts charged against him in the indictment.

I then pointed out to you that the word

"entrapment," as I use it, is a legal term which has a technical meaning, not the meaning of popular speech or colloquial usage and I will explain again to you the meaning of entrapment as it is used in the law.

I pointed out to you that criminal activity is such that sometimes stealth and strategy are necessary methods to be used by law enforcement officers and I think I discussed elsewhere in my charge the propriety of using undercover detectives and informers, and the like.

The function of law enforcement is not only the prevention of crime but also the detection and apprehension of criminals, and I instructed you that that function does not include the manufacturing of crime.

The defense of entrapment is based upon the policy of the law not to ensnare or entrap innocent persons into the commission of a crime and the line must be drawn between the entrapment of the unwary innocent person and the trap for the unwary criminal.

The fact that Government officials or their agents merely afford opportunities to one who is ready and willing to violate the law when the opportunity presents itself does not constitute entrapment.

However, in their efforts to enforce the laws, Government officials, detectives and the like, may not

entrap an innocent person who except for the Government's inducement would not have engaged in the criminal conduct charged.

Entrapment occurs only when the criminal conduct was the product of the creativity and activity of the law enforcement officials or their agents or informers. That is, if they initiate, incite, induce, persuade or lure an otherwise innocent person to engage in criminal activity. And if that occurs, the Government may not avail itself of the fruits of this type of instigation.

Now, if the prosecution has satisfied you on this trial record beyond a reasonable doubt that this defendant Reyes was ready and willing to commit the offenses charged, and merely was waiting for a favorable opportunity to commit them, waiting for someone to come along who wanted to engage in the purchase of narcotics, then you may find that the Governemnt did no more than furnish a convenient opening or opportunity for the criminal activity in which the defendant Reyes was prepared to engage.

In such circumstances, there would be no entrapment because you would be entitled to find that the Government's undercover agent did not seduce an innocent person but merely provided the means or the opportunity for the defendant to effectuate or realize his own then existing

purpose, to transact business with respect to narcotics.

On the other hand, if you have a reasonable doubt that the defendant would have committed the offenses charged without the Government's inducement, then it is your duty to acquit him.

Whether or not this defendant was entrapped is a question of fact which the jury must decide on all of the evidence in the case and it is a decision which you will make separately with respect to each of the three counts because the time frame and the circumstances of the counts is different.

Now, one way but not an exclusive way in which the Government can show that the defendant was ready and willing to commit the offenses charged is to prove to your satisfaction that the defendant either individually or acting jointly with other defendants named in the indictment had an already formed design to commit the crime for which he is charged in the particular count which you are then considering.

Another way is for the Government to show that the defendant was willing to commit the crime for which he is charged as evidenced by his ready response to the inducement, if you find that there was any inducement.

It is possible for a defendant to be induced as

to one count on one particular day and time, and then later on to commit the same crime over again in connection with a subsequent sale of heroin on a different date without having been induced to enter into criminal activity through the procurement or incitement or inducement of the Government agent.

You will decide these questions separately, as I mentioned before with respect to each count.

Now, a mere appeal to defendant Reyes' feelings of friendship for Mr. Louis Lopez and Mr. Reyes' desire to assist Mr. Lopez in getting out of jail and paying for his appeal or getting his bail or whatever it was, with money, if you find such an appeal was made by Detective Rodriguez, that would not in itself constitute entrapment.

Whether such an appeal, if made under all the circumstances in this case, had the effect of luring or inducing an otherwise innocent person to engage in the unlawful conduct is a matter before your decision.

As I previously noted, you may consider all the facts and circumstances insofar as they bear on whether or not this defendant was ready and willing to commit any of the crimes charged in the indictment at the time such crime was committed or before Rodriguez talked with defendant Reyes insofar as concerns the crime which is first in point

of time, or the alleged crime.

Before the Government is required to prove beyond a reasonable doubt that the defendant was ready and willing to commit the offenses charged and merely awaiting a favorable opportunity to commit them, the jury must first find some credible evidence in the case of Government initiation of the illegal conduct.

Of course, if you find that others, such as other defendants named in the indictment, initiated the involvement of defendant Reyes in the alleged conspiracy to sell, or the sale of heroin alleged in the indictment, then in that case, there would be no entrapment.

That constitutes the entire instruction which I had given you before with respect to the subject of entrapment and I now ask you to please return to the jury room and resume your deliberations.

If the jury desires any other or further information or anything else that you may want to have, as you understand, please write a note and send it out and I will reach it as promptly as I can.

Please withdraw to the jury room.)

(At 2:12 p.m., the jury again retired to continue their deliberations.)

THE COURT: We will be in recess pending further

hearing from the jury. Please stand by.

(At 4:40 p.m., a note was received from the jury.)

(Note from jury marked Court Exhibit 4.)

THE COURT: Gentlemen, I have a note which has been marked Court Exhibit 4. The note reads, "One of our jurors would like to make a couple of important phone calls."

If there is no objection on the part of counsel, it is my intention to write on the note itself as follows:

The juror should write out the message and telephone number and I will have the U. S. Marshal make the call, and sign it.

Is there any objection to doing that?

MR. REILLY: No objection.

MR. LEVNER: No objection.

THE COURT: You are speaking for Mr. Solomon also on this?

MR. LEVNER: Yes, sir.

THE COURT: Just have the marshal take it back in the jury room and we will continue in recess.

(Recess)

(At 5:03 p.m., the jury returned to the courtroom.)

THE CLERK: Mrs. Miller, have you agreed upon a verdict?

THE FORELADY: Yes, we have.

THE CLERK: What is your verdict to the defendant Antonio Reyes on Count 1?

THE FORELADY: Guilty.

THE CLERK: Count 2?

THE FORELADY: Guilty.

THE CLERK: Count 3?

THE FORELADY: Guilty.

THE CLERK: What is your verdict as to the defendant Brunilda Rodriquez on Count 1?

THE FORELADY: Guilty.

THE CLERK: Count 2 -- I mean Count 3.

THE FORELADY: 3, guilty.

THE CLERK: Members of the jury, listen to your verdict as it stands recorded. You say you find the defendant Antonio Reyes guilty on Counts 1, 2, 3; you find the defendant Brunilda Rodriguez guilty on Counts 1 and 3.

(Each juror, upon being asked by the clerk "Is that your verdict?", answered in the affirmative.)

THE COURT: I direct the clerk to record the verdicts at this time.

I will excuse the jurors with the thanks of the